UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Stephanie Gorham, Plaintiff, vs. Unum Life Insurance Company of America, Defendants.	Case No. 0:17-cv-866 **COMPLAINT**

Plaintiff, for her Complaint against Defendants, states and alleges:

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1) and (f) of the Employee Retirement Income Security Act of 1974 ("ERISA") over this claim for disability benefits under a plan governed by ERISA, 29 U.S.C. § 1001 *et seq*.

2. Venue is proper in this district pursuant to 29 U.S.C. § 1132 (e)(2)[1], because Unum Life Insurance Company of America may be found in this district. In particular, Unum Life Insurance Company of America is registered as a corporation with the State of Minnesota, conducts ongoing business with Minnesota residents, employs Minnesota residents, has extensive contacts within Minnesota, and accordingly, is found within Minnesota as required under 29 U.S.C. § 1132 (e)(2).

[1] 29 U.S.C. § 1132 (e)(2) states "While an action under this subchapter is brought in a district court of the United States, it may be brought in the district … while a defendant resides or may be found…"

3. On information and belief, Defendant Unum Life Insurance Company of America administers the employee benefits plan under policy number 527816 ("Plan") that BJC Health System, provide to its employees for income protection, should the employees become disabled.

4. The Plan is an ERISA welfare benefit plan governed by the provisions of ERISA.

5. On information and belief, Defendant Unum Life Insurance Company of America is a corporation organized and existing under the laws of the State of Maine, and is the insurer and claims administrator for the Plan.

6. Plaintiff is a resident and citizen of the United States, an employee of BJC Health System and a participant in the Plan.

7. As set forth in 29 U.S.C. §1133 of the ERISA statute, the Plan provides a mechanism for administrative appeals of benefit denials; Plaintiff has exhausted all such appeals.

8. On information and belief, Plaintiff was covered at all relevant times under Unum Life Insurance Company of America group disability policy number 527816, which was intended to insure participants of said Plan. A copy of the policy is attached as Exhibit A.

9. On or about November 14, 2016, pursuant to 29 U.S.C. § 1024(b)(4), Plaintiff submitted a request to Unum Life Insurance Company of America requesting Plan documents. On information and belief, Unum Life Insurance Company of America failed to mail copies of all requested documents within 30 days of Plaintiff's request;

accordingly, Unum Life Insurance Company of America may be liable for its failure to comply with 29 U.S.C. § 1132(c)(1), at the rate of $110.00 per day.

10. On information and belief, Unum Life Insurance Company of America both funds the Plan and decides whether participants will receive benefits under the Plan. Accordingly, Unum Life Insurance Company of America has a conflict of interest, which must be considered when determining whether its denial of Plaintiff's benefits was proper.[2]

11. Unum Life Insurance Company of America's interest in protecting its own assets influenced its decision to deny Plaintiff's application for disability benefits.

12. Under the Plan, a participant who meets the definition of "disabled" is entitled to disability benefits paid out of the Plan assets.

13. Plaintiff became disabled under the terms of the Plan's policy on or about June 30, 2001**,** and continues to be disabled as defined by the Plan. Accordingly, Plaintiff is entitled to benefits under said Plan.

14. Unum Life Insurance Company of America granted Plaintiff's claim for disability benefits, and issued payments to Plaintiff until approximately October 24, 2016, at which time it wrongfully discontinued benefits on the basis of a medical paper review.

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[2] "[A]n entity that is both the claims administrator and payor of benefits has a conflict of interest." *Jones v. Mountaire Corp. Long Term Disability Plan*, 542 F. 3d 234, 240 (8th Cir. 2008). Moreover, as the Supreme Court has held, "that conflict ***must be weighed as a factor*** in determining whether thise is an abuse of discretion." *Metro. Life Ins. Co. v. Glenn*, 128 S. Ct. 2343, 2348 (2008) (emphasis added).

15. Plaintiff appealed Unum Life Insurance Company of America's decision, which Unum Life Insurance Company of America denied on or about October 24, 2016.

16. Plaintiff provided Unum Life Insurance Company of America with substantial medical evidence demonstrating he was eligible for disability benefits.

17. Unum Life Insurance Company of America 's decision to deny disability benefits was arbitrary, capricious, unreasonable, irrational, wrongful, contrary to the terms of the Plan, contrary to the evidence and contrary to law, as demonstrated by the following non-exhaustive examples:

a. Unum Life Insurance Company of America provided inconsistent reasons for denying benefits;

b. Unum Life Insurance Company of America relied upon an improper definition of disability under the plan;

c. Unum Life Insurance Company of America , though it had a contractual basis to do so, failed to have Plaintiff independently examined, and instead relied on the opinion of a medical professional who merely reviewed Plaintiff's medical records and rejected the findings set forth in the medical records as well as the opinions of Plaintiff's treating physicians;

d. Unum Life Insurance Company of America relied on the opinion of a medical professional who was financially influenced by a financial relationship with Unum Life Insurance Company of America and, as such, unable to offer an unbiased opinion;

e. Unum Life Insurance Company of America relied on the opinion of a medical professional that was not supported by substantial evidence in the claim file, and was inconsistent with the overall evidence in the record;

f. Unum Life Insurance Company of America relied on the opinion of a medical professional who was unqualified to refute the findings of Plaintiff's physicians;

g. Unum Life Insurance Company of America ignored obvious medical evidence and selectively relied upon evidence as a basis to deny Plaintiff's claim;

h. Unum Life Insurance Company of America ignored and/or misrepresented the opinions of Plaintiff's treating physicians.

18. Unum Life Insurance Company of America abused its discretion in denying Plaintiff's claim.

19. Unum Life Insurance Company of America's decision to deny benefits failed to comply with the terms of the Plan and was unsupported by substantial evidence in the record.

20. Unum Life Insurance Company of America's failure to provide benefits due under the Plan constitutes a breach of the Plan.

21. Unum Life Insurance Company of America's failure to provide Plaintiff with disability benefits have, and will continue to, wrongfully deprived Plaintiff of Plan benefits for which he is entitled.

22. Unum Life Insurance Company of America's denial of benefits under the Plan has caused Plaintiff to incur attorneys' fees and costs to pursue this action and, pursuant to 29 U.S.C. § 1132(g)(1), Defendants should pay said fees and costs.

23. Plaintiff requests that the Court declare that he meets the Plan's definition of "disabled" and, accordingly, is entitled to all benefits available under said Plan.

24. Plaintiff requests reimbursement of all expenses and premiums she paid for benefits under the Plan from the date of termination of benefits to present. Plaintiff further requests imposition of penalties pursuant to 29 U.S.C. § 1132(c)(1) for the failure to timely provide requested plan documents. Alternatively, Plaintiff requests that the Court remand and instruct Unum Life Insurance Company of America to adjudicate Plaintiff's claim in a manner consistent with the terms of the Plan.

WHISEFORE, Plaintiff respectfully requests the following relief:

1. Declaration that Unum Life Insurance Company of America wrongfully terminated Plaintiff's disability payments under the subject plan;
2. Declaration that Plaintiff remains disabled and as such is entitled to past, present and ongoing payment benefits under the subject Plan;
3. Declaration that Plaintiff is entitled to equitable relief pursuant to 29 U.S.C. § 1132(a)(3);

4. That Unum Life Insurance Company of America pay damages to Plaintiff in an amount equal to the disability income benefits from the termination date up to and including the date of judgment, as allowed under 29 U.S.C. § 1132(a)(1)(B);

5. That Unum Life Insurance Company of America pay prejudgment and post-judgment interest, calculated from each payment's original due date through the date of actual payment;

6. That Unum Life Insurance Company of America pay Plan benefits beyond disability benefits that Plaintiff is entitled to while receiving disability benefits;

7. That Unum Life Insurance Company of America reimburse all expenses and premiums Plaintiff paid for benefits under the Plan from the time of denial of benefits to the present;

8. That Unum Life Insurance Company of America pay all applicable penalties for its failure to timely provide Plaintiff all Plan documents pursuant to 29 U.S.C. § 1132(c)(1).

9. That Unum Life Insurance Company of America pay all reasonable costs and attorneys' fees incurred in this action as allow by under 29 U.S.C. § 1132 (g)(1); and

10. Any other legal or equitable relief the Court deems appropriate.

Dated: 03/23/2017

RESPECTFULLY SUBMITTED,

By: /s/ Merrick Williams

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